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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Panel discussion on the protection of the human rights of persons deprived of their liberty*

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 24/12, contains a summary of the panel discussion on the protection of the human rights of persons deprived of their liberty, held on 10 September 2014 during the twenty-seventh session of the Council.

* Late submission.

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I. Introduction

1. In its resolution 67/166 on human rights in the administration of justice, the General Assembly requested the Secretary-General to submit to the Assembly at its sixty-eighth session, and the Human Rights Council at its twenty-fourth session, a report on the latest developments, challenges and good practices in human rights in the administration of justice, analysing the international legal and institutional framework for the protection of all persons deprived of their liberty and the activities undertaken by the United Nations system as a whole. The report (A/68/261) was considered by the Council at its twenty-fourth session. In its resolution 24/12, the Council called upon States to ensure that anyone deprived of his or her liberty has prompt access to a competent court, encouraged States to address overcrowding in detention facilities, and urged States to endeavour to reduce pretrial detention.

2. In its resolution 24/12, the Human Rights Council also decided to convene a panel discussion on the protection of the rights of persons deprived of their liberty, within the framework of agenda item 3, to be held at its twenty-seventh session. The Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to consult with States, relevant United Nations bodies and mechanisms, in particular the United Nations Office on Drugs and Crime (UNODC), as well as with civil society and other stakeholders, with a view to ensuring their contribution to the panel discussion. It also requested OHCHR to prepare a report on the outcome of the panel discussion in the form of a summary, to be presented to the Council at its twenty-eighth session.

II. Opening statement by the Director of the Research and Right to Development Division, Office of the High Commissioner

3. In her opening remarks on 10 September 2014, the Director of the Research and Right to Development Division, Jane Connors, reminded participants that some 10 million people around the world were currently subjected to various forms of detention. Of these, women in particular were at a high risk of human rights violations, as were children, migrants and members of minorities.

4. Ms. Connors pointed out that international law provided a comprehensive legal framework for the protection of persons deprived of their liberty whatever the grounds for their detention, but that challenges remained with regard to national implementation of those internationally accepted norms. She also outlined some of the main issues to be addressed in order to ensure that the human rights of persons deprived of their liberty were better protected: lack of adequate judicial oversight regarding the treatment, conditions and legality of detention; overuse of detention, including of pretrial detention; and as a consequence, overcrowding and poor conditions of detention.

5. The International Covenant on Civil and Political Rights required States to implement judicial oversight and complaints mechanisms. Article 9, paragraph 4 of the Covenant codified the right of anyone under arrest or detention to initiate proceedings before a court, and required that a prompt decision be made on the lawfulness of detention and that release be ordered should detention be found to be unlawful. Such safeguards were vital but too often ignored.

6. Ms. Connors underlined the fact that, although the Covenant stipulates that pretrial detention must be exceptional and for as short a period as possible, an estimated 3 million people were behind bars awaiting trial. In some countries, pretrial detention was employed

systematically, even for minor offences. She also recalled that, while persons in pretrial detention must be considered innocent until proven guilty, if they had no opportunity to challenge the lawfulness of their detention they could remain in detention for years. As a result, in some countries, pretrial detainees made up the majority of the prison population.

7. Pretrial detainees could be subjected ill-treatment or torture, used to obtain a confession or to pressure them to inform on others. Although the International Covenant on Civil and Political Rights requires accused persons to be kept separate from convicted persons and that they should receive treatment appropriate to their status, in a significant number of States accused persons were held in the same facilities as sentenced prisoners, including serious offenders. This greatly increased the possibility of pretrial detainees being subjected to violence.

8. Ms. Connors recalled that there had been a persistent failure in providing women with alternatives to imprisonment on an equal basis with men, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). Women were also particularly affected by the lack of opportunity to challenge their detention because they were less likely to be able to afford bail costs. In order to reduce the risk of sexual violence, women, when in detention, including pretrial detention, should be separated from men and supervised only by women,.

9. Tougher laws and sentencing practices had led to overuse of incarceration, which, together with excessive use of pretrial detention, resulted in overcrowding. Overcrowding could facilitate the spread of infectious diseases, owing to inadequate sanitary conditions and health care; sub-standard living conditions, including poor access to food, water, clothing and physical exercise; and more generally, socioeconomic effects on detainees and their families.

10. In order to address overcrowding, Ms. Connors called for more systematic application of relevant international norms and standards. She also highlighted alternatives to prison sentences, including non-custodial measures, such as mediation, diversion, community services and administrative sanctions or fines. She called upon States to consider adopting sentencing guidelines that discouraged disproportionately long prison sentences, and to explore the possibility of sensitizing judges to possible alternatives to sentencing. She also pointed out that many States could benefit from making a greater effort to prevent reoffending, including through educational opportunities, vocational guidance and training on the rehabilitation of prisoners.

11. In conclusion, OHCHR had identified the protection of the rights of persons deprived of their liberty as a strategic priority in its Office Management Plan for the period 2014-2017. She reminded the Human Rights Council that the international community must advocate for greater political will to tackle the challenges facing the rights of persons deprived of their liberty, and that far more technical assistance and good practices should be made available to States that wished to improve their compliance with international norms.

III. Summary of panellists' interventions

12. The Vice-President of the Human Rights Council, Ambassador Alberto Pedro D'Alotto, opened the high-level panel discussion, pointing out that the fact that the Council had convened the panel discussion showed that it recognized the importance of debate on the question of the rights of persons deprived of their liberty.

13. In his introductory remarks as moderator of the panel, the Chairperson of the Working Group on Arbitrary Detention, Mads Andenas, reminded the Human Rights Council that States enjoyed a great margin of discretion in the formulation of their policies

on crime. However, both article 9 of the International Covenant on Civil and Political Rights and customary international law provide that Governments should deprive individuals of their liberty only when there is a pressing societal need, and in a manner proportionate to that need. Mr. Andenas also pointed out that many States had witnessed an increase in the use of imprisonment as a sentence, with more minimum sentences and less discretion for judges, as well as an increased use of indeterminate detention. In addition, hastily drafted legislation on detention, in the case of extradition or immigration control, often did not take into account basic international law obligations. For this reason, international supervision was increasingly important in order to protect the human rights of persons deprived of their liberty, in particular in the area of over-incarceration, which was raising an ever greater number of problems in this context.

14. When considering the adequacy of the international framework on judicial oversight, the Chairperson of the Human Rights Committee, Nigel Rodley, stressed that the issue of judicial oversight of detention was central to the International Covenant on Civil and Political Rights and to the Committee's understanding of it. It arose primarily in two contexts under article 9: firstly, article 9, paragraph 3 affirms that everyone has the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power if being held in connection with criminal charges; and secondly, article 9, paragraph 4 affirms that everyone has the right to challenge the lawfulness of his or her detention under all circumstances, irrespective of the reason for the detention. This right applied in all circumstances, including, in principle, in times of emergency. The Committee considered that the prohibition of arbitrary arrest and detention was non-derogable under international law. The Committee Chairperson welcomed the panel's attention to the fact that, too often, persons deprived of their liberty do not have the opportunity to challenge their detention legally, and called upon parties to the Covenant to ensure that detention could be challenged before a court by persons subjected to that detention or someone acting on their behalf.

15. According to the Senior Legal Officer at the Open Society Justice Initiative, Martin Schöntiech, the excessive and arbitrary use of pretrial detention constituted a massive violation of human rights. He estimated that, in a typical year, 15 million unique individuals passed through the world's pretrial detention systems. Considering the sheer number of families and households affected by detention, tens of millions of people around the world came into contact with a pretrial detention regime every year. Mr. Schöntiech identified five significant consequences of pretrial detention: prison overcrowding and the resulting poor conditions; torture, cruel, inhuman or degrading treatment; poor public health and the spread of infectious diseases among detainees; corruption; and socioeconomic issues. Pretrial detention had socioeconomic consequences for detainees and their families. The family of a detainee often had to pay bail or provide for the costs of a lawyer. In some countries, they had to provide food, clothing and medicine. Mr. Schöntiech stressed that these consequences were interrelated and compounded one another. For example, corruption leads to arbitrary arrests, which causes prison overcrowding. Overcrowding undermines public health, which in turn increases the impact of pretrial detention on detainees, their families and communities. Mr. Schöntiech concluded by stressing that alternatives to pretrial detention were often provided for in the law; the problem, however, lay in their implementation.

16. When asked about his views on the oversight and monitoring mechanisms of treatment of detainees and their conditions of living, the Public Defender at the Tribunal de Casación Penal of Buenos Aires and member of the Advisory Committee of the Human Rights Council, Mario Coriolano, called for a stop to overcrowding in jails across the world, because the situation was leading to an increase in social violence. He stressed that many different monitoring bodies existed - local, international, judicial, internal and external – and that they should complement each other, because there was a great number

of places of detention that had to be monitored. External oversight bodies, such as national preventive mechanisms, had to be independent, adequately budgeted and be able to make recommendations on the basis of information gathered. Mr. Coriolano also mentioned two monitoring mechanisms: judicial mechanisms and public defence models. In addition to being themselves oversight bodies, they could also receive complaints from detainees, and needed to work effectively in order to ensure external oversight of places of detention. Mr. Coriolano encouraged States that have not yet ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to do so. He noted that prisons failed to meet their objectives, because increasing the prison population had not reduced crime.

17. The Regional Director for the Middle East and North Africa region at Penal Reform International, Taghreed Jaber, addressed the impact issue of prison overcrowding on human rights. She pointed out that the region was suffering greatly from prison overcrowding, and that, indeed, many prisons were operating at 150 per cent of their capacity. With regard to health issues, Ms. Jaber identified the different ways in which overcrowding affected how people live in prison: when prisons were overcrowded, resources became more scarce, infectious diseases spread more easily, and proper nutrition could not be guaranteed. Overcrowding leads to reduced access to washing facilities, which itself could lead to outbreaks of many different diseases, including skin diseases. It also created problems with food and nutrition; in many countries, detainees had to rely on help from their families to send them the food they needed to survive. Overcrowding was an issue not only for detainees, but also for prison workers, who were often required to supervise too many detainees, whose security was thereby jeopardized. Ms. Jaber recalled that her organization had seen situations of only one prison guard responsible for more than 200 detainees, which could lead to many different problems. Overcrowding affected different categories of detainees, in particular women and their children, who accompany their mothers to the place of detention, where they may be faced with exploitation. There was a clear linked between overcrowding and the ongoing deterioration in prison conditions.

18. The Chairperson of the Austrian Ombudsman Board, Gertrude Brinek, shared her experience as a member of the national preventive mechanism. She agreed with Mr. Coriolano on the necessity of the independence of national preventive mechanisms, as required by the Paris Principles, and she underscored that that independence had to be guaranteed by legislation that provided for adequate budgetary and staff resources. Expanding on the experience of the national preventive mechanism, Ms. Brinek detailed the basic requirements of monitoring mechanisms. Aside from independence and sufficient resources, members of such mechanisms should have expertise in diverse areas, including psychology, law and medicine; and they should be able to have private and confidential discussions with persons deprived of their liberty. Ms. Brinek pointed out, however, that challenges remain with regard to establishing new standards applicable to non-traditional places of detention, such as juvenile crisis centres. The focus needed to be on better resource utilization, including on increased employment and educational opportunities, as well as on the use of alternatives to jailing juveniles and adults, including electronic ankle bracelets.

19. The Crime Prevention and Criminal Justice Officer of the Justice Section of the Division for Operation at UNODC, Piera Barzanò, informed the Council on the work undertaken concerning the revision of the Standard Minimum Rules for the Treatment of Prisoners. She explained that the Commission on Crime Prevention and Criminal Justice had established an open-ended intergovernmental expert group, which had identified nine areas for targeted revision of the Standard Minimum Rules, keeping in mind that any changes to them should not lower existing standards, but rather improve them so that they reflect recent advances in correctional science and good practices, and promote safety, security and humane conditions for prisoners. Ms. Barzanò emphasized that it was only

those specific areas that had been scrutinized, and that the structure of the whole Standard Minimum Rules was not being put in question. The more sensitive areas that would require much discussion included health care, the special needs of groups in vulnerable situations, the right of access to legal representation throughout the execution of a sentence, disciplinary actions, complaints and independent inspection processes, and investigations into deaths in custody. Ms. Barzanò also underlined the importance of addressing the causes of prison problems that were directly connected to sentencing and criminal policies at the national level. Through its technical assistance, UNODC sought to promote a dialogue at the national level to ensure that criminal policies were more balanced and consistent, as they were the root cause of overuse of detention, including pretrial detention and the excessive length of sentences, which in turn had a negative impact on the administration of prisons.

IV. Summary of the discussion

20. During the interactive discussion, delegates from Algeria, Austria, Burkina Faso, China, Colombia, Cuba, Denmark, Egypt, Estonia, the European Union, France, Iceland, India, Indonesia, Iraq, Ireland, Italy, Morocco, Pakistan, Portugal, Switzerland, Ukraine, the United States of America and Uruguay took the floor, as well as from the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Children's Fund (UNICEF).

21. Delegates from national human rights mechanisms and non-governmental organizations also took the floor, representing the Association for the Prevention of Torture, Defence for Children International, the International Catholic Child Bureau (Peru), the Ombudsman from Georgia and the Friends World Committee for Consultation (Quakers). A joint statement was presented by Penal Reform International. A representative of the International Committee of the Red Cross (ICRC) also took the floor.

22. Delegates welcomed the convening and organization of the panel discussion, which they viewed as a useful platform for the discussion of good practices and sharing relevant experiences, and as an opportunity to reiterate their commitment to improving the situation of persons deprived of their liberty.

23. The delegations agreed on a number of general points, including that the deprivation of liberty placed individuals at risk of human rights violations, and that persons deprived of their liberty should enjoy the same human rights protection as any other individual, taking into account the lawful limitations rendered necessary by the fact of their incarceration. Several delegations noted that the incorporation of international standards into national legislation and policies related to the detention of persons deprived of their liberty. For example, one delegation highlighted the fact that the rights of persons deprived of their liberty were enshrined in the national Constitution. Several delegations expressed their support for a revision of the Standard Minimum Rules. Some pointed out that prisons, as they were known nowadays, had failed to fulfil their original purpose, namely, the rehabilitation of offenders and their reintegration into society.

A. Monitoring bodies and judicial oversight mechanisms

24. During the interactive discussion, participants highlighted the fact that there were many international human rights mechanisms dealing with the rights of persons deprived of their liberty, including human rights treaty bodies (in particular the Human Rights Committee, the Committee against Torture and the Subcommittee on Prevention of Torture), and special procedures mandate holders (including the Working Group on

Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment).

25. The Association for the Prevention of Torture recalled that the Optional Protocol to the Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment had established the Subcommittee on Prevention of Torture, and required each State party to maintain, designate or establish national preventive mechanisms. Both the Subcommittee and national preventive mechanisms frequently visited places where persons may be deprived of their liberty, and made recommendations on improving conditions of detention and promoting changes in legislation and policies over the long term. Many delegations acknowledged the important role played by these monitoring bodies, and stressed in particular the importance of their independence, adequate funding and qualified human resources.

26. One delegation described the establishment of a national preventive mechanism and the changes to the State's penitentiary law, which now provided detainees with the right to communicate with the inspector of the place of detention and the right to request a visit by the inspector through a representative office established in the place of detention.

27. Several delegations also emphasized the fact that such monitoring bodies could not be totally efficient without the collaboration of the State and its officials, in particular law enforcement officials and personnel working in places of detention. One delegation pointed out that the State's national preventive mechanism had greatly benefited from adequate and secure funding, and could count on the cooperation of the personnel working in places of detention, who had been properly informed of the mandate of the mechanism. A representative of a national human rights institution stated that, in its latest report, the institution had highlighted the lack of independence, impartiality and effectiveness of investigations into cases of torture and mistreatment perpetrated by law enforcement agents. It was also noted that the impact of national preventive mechanisms could be strengthened through the creation of independent investigative bodies tasked with handling allegations of torture and ill-treatment committed by law enforcement officials.

28. Delegations also raised the question of judicial oversight of the legality of detention. They highlighted the importance of providing persons deprived of their liberty with the opportunity to challenge their detention and to obtain redress for human rights violations experienced during detention, although this possibility did not exist in all States. The connection between substandard conditions of detention and the unlawfulness of detention was also made. It was suggested that when persons are detained in conditions that do not respect their human dignity, the legitimacy of such detention is undermined. The Chairperson of the Human Rights Committee underlined that, as stated by the Committee in its general comment No. 35 on article 9 of the International Covenant on Civil and Political Rights, judicial review includes not only a review of the process of detention itself, but also a review of treatment in detention.

29. Several delegations stressed the importance of technical assistance and the exchange of expertise at the regional and international levels. There was also strong demand for the sharing of good practices in criminal justice systems. For example, one delegation suggested inter-State cooperation to improve implementation of the Convention against Torture.

30. Delegations gave examples of good practices regarding monitoring bodies and judicial oversight. Independent and prompt investigations into complaints, and regular inspections of prisons by prosecutors, were mentioned as ways that could contribute to guaranteeing the rights of persons deprived of their liberty. One delegation underlined the requirement of being represented by a lawyer and having interpretation provided when necessary.

B. Pretrial detention and the need for alternatives to detention

31. Several delegations expressed their concern at the excessive and unjust use of pretrial detention, including administrative detention, and pointed out that torture and ill-treatment are often a feature of the first hours of detention. They also stressed the need to respect the right to prompt access to a lawyer and the universal prohibition of incommunicado detention. The Chairperson of the Human Rights Committee raised concerns regarding the lack of limitations on the amount of time that persons can be held before being brought before a judge. In this regard, he recalled that 24 to 48 hours are generally established as the default period internationally.

32. Mr. Schöntiech emphasized the fact that raw data show important discrepancies between States, sometimes even in the same region. The most crucial variables were political will, and how it translated into the bureaucratic day-to-day routine of law enforcement and judicial officials. Several delegations stressed the need for better data, in particular on the extent to which alternative mechanisms are actually used in the criminal justice system and on the number of people awaiting trial or who commit crimes while awaiting trial. Concurring with Mr. Schöntiech, Ms. Jaber emphasized the need to identify gaps, and suggested that the Human Rights Council should look more closely at them.

33. Pretrial detention was regarded as inextricably intertwined with the issue of overcrowding. Several delegations and panellists stressed that often, more than half of all prisoners are in pretrial detention, which contributed to overcrowding and its dramatic consequences. Mr. Schöntiech also stated that pretrial detention could influence judges and prosecutors to favour custodial sentences, given that there was empirical evidence that pretrial detainees are at a greater risk of being incarcerated once convicted.

34. Some delegations shared success stories regarding the reduction of pretrial detention. For instance, in some States, the use of diversion and community-based conflict resolution mechanisms had reduced the number of persons held in pretrial detention. In other States, pretrial evaluation services had contributed to a reduction in the number of pretrial detainees. In the African region, the increasing use of paralegals had contributed to a reduction in pretrial detention and detention in general. Paralegals filled the legal assistance gap created by an insufficient number of practising lawyers, or by the fact that lawyers' fees were too high. Paralegals provided legal guidance, made requests for alternatives to pretrial detention and alerted families so that they could pay bond. The system of paralegals was being increasingly used in Asia.

C. Overcrowding and overincarceration

35. Some participants made the point that there is a chain reaction between incarceration, overcrowding and poor conditions of detention. Excessive use of custodial measures inevitably leads to overcrowding, which in turn contributes to very poor conditions of detention. Many delegations deplored the widespread incidence of overcrowding, and acknowledged it as a global issue. Penal Reform International noted that 117 out of 203 jurisdictions for which data had been collected had prison occupancy rates exceeding 100 per cent.

36. Overcrowding generated substandard and sometimes inhumane conditions of detention, and put frontline staff in a position where they could no longer ensure security in places of detention. The representative of ICRC pointed out that overcrowding compromised the capacity of administrative authorities to fulfil basic needs, in particular those related to living conditions, legal aid, health care and family visits. The delegation from UNAIDS stressed that the health of persons in prisons has an impact on public health.

Overcrowding increases vulnerability to human immunodeficiency virus, hepatitis, tuberculosis and other infectious diseases. Many detainees in overcrowded places of detention have no access to clean needles, condoms, testing or treatment.

37. Some delegations suggested that overcrowding and overuse of custodial measures is a political problem rather than a legal issue. Some policies, such as those that sought to impose custodial sentences for certain crimes, were inadequate to prevent crime and only contributed to overcrowding. The lack of political will to address the issue of overcrowding was an issue worldwide. Mr. Coriolano identified various factors contributing to overcrowding, including non-compliance with international standards, the lack of human rights-based plans to reduce overcrowding, and the need for more resources to implement those plans.

38. Ms. Barzanò stated that it was crucial to treat prison overcrowding as a symptom rather than a problem to be solved on its own. There was a need to address the causes of incarceration, which went well beyond prison administration. Several delegations suggested that overcrowding should be addressed by social measures aimed at diversion from the criminal justice system. Crime prevention and alternatives to detention, such as community work or mediation, could also help to reduce the prison population and were especially appropriate for petty offences. Building more prisons was not a solution to overcrowding: a preventive approach, based on principles of necessity and proportionality, was rather needed to reduce detention.

39. Examples of the efforts made to reduce over-incarceration and overcrowding were provided by a number of delegations. They included offering alternatives to detention for non-violent offenders (for example, electronic bracelets or community service), release after two thirds of the sentence had been served, and providing training to specialized judges. Measures to promote reintegration into society, such as opportunities for professional training or attending prison colleges, and facilitating interaction with family and friends were also highlighted.

40. It was suggested that the Human Rights Council could elaborate guidelines for States on the reduction of overcrowding. The representative of ICRC informed the Council that it had drafted a handbook on strategies for the reduction of prison populations in cooperation with UNODC. ICRC also stressed the need for a common conceptual framework on the issue and holistic and practical guidance to prevent and alleviate the humanitarian consequences of overcrowding.

D. Specific groups deprived of their liberty

41. During the discussions, participants also addressed the human rights of specific groups deprived of their liberty. In particular, they drew the attention of the Human Rights Council to the needs and particular vulnerability in detention of women, children (including migrant children), persons with HIV/AIDS, and persons on death row. More generally, it was agreed that minorities in detention are at greater risk of human rights violations and face additional challenges in detention, given that the system has not been designed for them.

42. Ms. Barzanò informed the Human Rights Council that, in the context of the revision of the Standard Minimum Rules for the Treatment of Prisoners, the question of how to address particular groups in detention in the Rules was the object of important discussions. For example, children fall outside their ambit given that a set of standards dealing specifically with their needs already exists, and no consensus had yet been reached on how to include certain aspects of the Bangkok Rules in the Standard Minimum Rules. Whether

the Standard Minimum Rules should be expanded to cover all forms of deprivation of liberty was also being debated.

43. The Bangkok Rules were useful when considering women offenders. Some delegations provided examples of good practices in the implementation of the Rules. In one State, the Bangkok Rules could be invoked to justify alternative measures for women who had committed an offence but did not represent a serious risk to society. It was noted that, because the infrastructure of most detention facilities around the world was designed for the needs of young men, it did not take into account the needs of women; the effects of imprisonment on them are therefore much harsher. In addition, the imprisonment of women has a particularly negative impact on the children they care for and their households. In the view of Ms. Barzanò, the impact from a community point of view is much greater than when men are put in prison.

44. An observer from the Friends World Committee for Consultation (Quakers) stated that it had been demonstrated that children with parents in detention are at a greater risk of becoming mentally ill and excluded from society. Several delegations stressed the importance of not separating mothers from their children. Family separation should be avoided whenever possible, and detainees should be kept in prisons as close to their home and family as possible. A representative of UNICEF stressed the need to make alternatives to the deprivation of liberty available for mothers, for example community work or restorative justice process, while always keeping the best interests of the child in mind.

45. The specific needs of juveniles in detention were addressed by several delegations. UNICEF recalled that the incarceration of children should be used as a last resort, and that, when it is imposed, it should be as short as possible. It added that migrant children are particularly at risk of being detained; they should not, however, be detained as a consequence of their parents' immigration status. The detention of migrant children always constitutes a violation of the rights of the child, and specific attention should be given to children's access to safe places, as well as to legal, social and education services. Defence for Children International pointed out how the sheer lack of specific quantitative and qualitative data on children made it more difficult to address the issue of children deprived of their liberty adequately. The delegation stressed the need for proper studies on children deprived of their liberty, and suggested that such studies be undertaken by the General Assembly and be funded voluntarily by United Nations agencies.

46. Some States described their experience with juveniles in detention. The delegation of one State deplored the lack of specialized judges and educators to support juvenile criminal offenders. In the view of one delegation, offenders should be held in non-prison facilities, run and supervised by government agencies specializing in child protection, to mitigate the traumatic nature of detention. Another delegation shared the practice of keeping adolescents with their families as much as possible before moving them to juvenile correctional centres. The need to maintain contact between juvenile offenders and their families was stressed by several other delegations.

47. With regard to the protection of persons belonging to specific groups who are deprived of their liberty, the dissemination and promotion within the prison system of different policies focusing on groups, such as women and indigenous people, was presented as a good practice to follow. Concerning the protection of persons from any at-risk groups in prison, one delegation stressed that the rights of persons deprived of their liberty are guaranteed in its Constitution, and that the State was vigilant in the prevention of human rights violations. UNAIDS called for specific attention to be paid to persons with HIV/AIDS in detention, and insisted that monitoring mechanisms should include an assessment of access to HIV prevention, care and support services.

V. Conclusions

48. The panellists and delegations stressed that the issue of the rights of persons deprived of their liberty is one of universal importance. Many delegations took the floor to share their commitment to ending human rights violations in places of detention.

49. During the panel discussion, participants reaffirmed the adequacy of existing forms of protection for the rights of persons deprived of their liberty in international human rights law, as well as of the international human rights mechanisms that focus on this issue. They emphasized that challenges remain in the national implementation of international norms and standards. Political will, or lack of thereof, was identified as one factor contributing to the failure of national implementation.

50. The important role played by national and international monitoring bodies for the protection of the rights of persons deprived of their liberty was highlighted by a number of delegations and panellists. The delegations also underscored the importance of judicial oversight of detention, which included the monitoring of conditions of detention and the legality of detention itself. It was emphasized that, as stated by the Committee on Human Rights in its general comment No. 35 on article 9 of the International Covenant on Civil and Political Rights, judicial review includes not only a review of the process of detention, but also of treatment in detention.

51. While some delegations expressed concern at the potential for overlap between the various international human rights mechanisms, it was stressed that the mechanisms worked as cooperatively as possible in order to mitigate such a risk.

52. Several delegations described how conditions of detention were negatively affected by overcrowding. Overcrowding and excessive recourse to detention seemed to be of universal concern, and were often raised during the discussions; several participants highlighted the need to address the causes of these issues. The significant impact of pretrial detention on overcrowding was noted in several interventions. In addition, several delegations stressed that, in order to tackle overcrowding and excessive recourse to detention, it was necessary to address their root causes, including criminal policy and the insufficient use of alternatives to detention.